

REMARKS

Claims 1, 8-14, 16, 18, 21-22, 27-34, 36-56, 58-63, and 65-66 have been amended. Claims 2, 35, 57, and 64 have been canceled. Claims 67-71 have been added. Accordingly, after entry of this Amendment, claims 1, 3-34, 36-56, 58-63, and 65-71 will remain pending.

In the Office Action of April 25, 2003, the Examiner acknowledged the Applicants' election, with traverse, of the subject matter depicted in Figures 4-7. In connection therewith, the Examiner noted on the Office Action Summary page that claims 8-25, 33-36, 53-55, 61, 62, 65, and 66 were withdrawn from further consideration. On page 2 of the Detailed Action, at paragraph 1, however, the Examiner listed a different set of claims, namely claims 8-14, 16, 17, 20-25, 53-55, 61, 62, 65, and 66, as being withdrawn from further consideration. The Applicants respectfully request that the Examiner correct this inconsistency in the record. For purposes of this Amendment, the Applicants assume that the listing of the claims on the Office Action Summary page is what the Examiner intended.

Before addressing the rejections of the claims, the Applicants respectfully request that the Examiner reconsider the decision to withdraw claims 8, 15-17, 20-25, 33-34, 36-37, 53-55, 61-62, and 65-66 from further consideration. Should the Examiner elect to remove the withdrawn status of these claims, only claims 9-14 and 18-19 will remain withdrawn from consideration.

In particular, the Applicants believe that claim 8 should be examined. Claim 8 recites that the torsion control mechanism includes a torsionally flexible element. As paragraphs [0045] and [0046] of the specification make clear, the torsion bar 228 is a torsionally flexible element. Since the torsion bar 228 is depicted in Figures 4-7, the Applicants respectfully submit that claim 8 should not have been withdrawn from consideration.

Similarly, the Applicants respectfully submit that claim 15 should be considered. Claim 15 recites that the left and right swing arms are generally transverse to the torsion

control mechanism. The Applicants respectfully submit that this feature is clearly illustrated in Figures 4-7. Accordingly, the Applicants respectfully request that the Examiner remove the “withdrawn” status of this claim.¹

Next, the Applicants respectfully request that the Examiner reconsider the withdrawal from consideration of claims 16 and 17. Like claim 8, claim 16 recites that the torsion control mechanism includes a torsionally flexible element, a feature found in paragraphs [0045] and [0046] of the specification. Claim 17 depends from claim 16 and adds that the left and right swing arms define a pivot plane, among other features. This feature is clearly depicted in Figures 4-7. Accordingly, the Applicants respectfully request that the Examiner remove the “withdrawn” status and consider these claims.

Additionally, the Applicants respectfully request that the Examiner consider claims 20-25, which depend directly or indirectly from claim 16. Claim 20 recites that the torsionally flexible element comprise a torsion bar. As discussed above, this feature is illustrated in Figures 4-7 and is discussed at least in paragraphs [0045]-[0046] of the instant application. Claim 21 depends from claim 20 and recites that the torsion control mechanism include at least one of a bearing and a bushing. A bearing 232 is depicted in Figure 6 and is described at least in paragraph [0042]. Claim 22 also depends from claim 20 and recites that the left and right swing arms include a housing through which the torsion bar extends. The Applicants respectfully point out that this feature is also depicted at least in Figure 6. Claim 23 depends from claim 22 and recites that a flange cover is coupled to an outer side of each housing. The Applicants respectfully point out that this feature refers, for example, to the end caps 248, which are depicted at least in Figure 6. Claim 24 depends from claim 20 and recites, among other features, that the left and right swing arms are capable of pivotal

¹ The Applicants respectfully submit that the Examiner appears to believe that claim 15 is not withdrawn from consideration, because claim 15 was rejected as set forth in paragraph 3 of the Office Action. Clarification of the status of this claim is respectfully requested.

movement. This feature is described at least in paragraph [0045], which clearly describes the operation of the embodiment illustrated in Figures 4-7. Claim 25 depends from claim 24 and recites that the torsion deflection limit is within an elastic deformation limit of the torsion bar. This feature is described at least in paragraphs [0045] and [0046], both of which describe the operation of the apparatus depicted in Figures 4-7. Accordingly, the Applicants respectfully submit that claims 20-25 should not have been withdrawn from consideration by the Examiner. As a result, the Applicants respectfully request that the Examiner remove the “withdrawn” status of these claims and consider them in response to this Amendment.

The Applicants also respectfully submit that claims 33-34 and 36-37 should be considered by the Examiner in addition to the other claims discussed above. Claim 33 depends from claim 27, which is not withdrawn from consideration. Claim 33 recites that the torsion control mechanism includes a torsionally flexible element. As discussed above, this feature is discussed at least in paragraphs [0045] and [0046], which describe the embodiment illustrated in Figures 4-7. Claim 34 depends from claim 33 and recites, among other features, that the torsion bar is non-rotatably connected to the left and right swing arms. This feature is described at least in paragraph [0043], which also discusses the apparatus illustrated in Figures 4-7. Claim 36 depends from claim 34 and recites that the torsion bar is transverse to the driving direction of the vehicle. This feature is illustrated at least in Figures 4 and 5. Claim 37 depends from claim 27 and recites a shock absorber member on each of the left and right swing arms. This feature is depicted at least in Figure 5. Since all of the features concern the embodiment illustrated at least in Figures 4-7, the Applicants respectfully submit that the Examiner reconsider the withdrawal of these claims and consider same.

The Applicants also respectfully request that the Examiner consider claims 53-55. These claims depend, either directly or indirectly from claim 47, which the Examiner has considered. Claim 53 depends from claim 52 and recites that the torsional control

mechanism include a torsionally flexible element connected to the swing arms. As discussed above, the torsion bar 228 is a torsionally flexible element. The torsion bar 228 is described at least in paragraphs [0045] to [0046] and is depicted at least in Figures 4-7. Claim 54, which depends from claim 53 recites, among other features, that the torsion bar extend between the swing arms. This feature is illustrated at least in Figure 6. Claim 55 depends from claim 52 and recites that the torsion control mechanism be mounted to the lower supporting portion, above the lower most portion of the frame. This feature is illustrated at least in Figure 4. As with the other claims discussed above, the Applicants respectfully request that the Examiner remove the “withdrawn” status of these claims and consider same.

Next, the Applicants respectfully request that the Examiner consider claims 61 and 62, which depend indirectly from claim 56, which the Examiner has considered. Claim 61 depends from claim 59 and recites that the torsion control mechanism include a torsionally flexible element, among other features. As discussed above, the torsion bar 228 is a torsionally flexible element. The torsion bar 228 is illustrated at least in Figure 6 and is described at least in paragraphs [0045] and [0046]. Claim 62 depends from claim 61 and adds that the torsionally flexible element be non-rotatably connected to the swing arms, among other features. As discussed above, this feature is discussed at least in paragraph [0043]. At least for these reasons, the Applicants respectfully request that the Examiner remove the “withdrawn” status of these claims and consider them in response to this Amendment.

Finally, the Applicants respectfully request that the Examiner consider claims 65 and 66 together with the other claims being examined. Claims 65 and 66 depend from claim 63, which the Examiner has considered. Claim 64 recites that the torsion control mechanism include a torsionally flexible element, among other elements. As discussed, this feature is fully supported by the disclosure attendant to Figures 4-7. Claim 66 depends from claim 63

and additionally recites that the torsionally flexible element be a torsion bar. As discussed above, at least Figure 6 illustrates a torsion bar 228. Accordingly, the Applicants respectfully request that the Examiner remove the “withdrawn” status of these claims and consider them further.

In the Office Action, the Examiner rejected claims 1, 5, 15, and 26 under 35 U.S.C. § 102(b) as anticipated by Barenyi et al. (U.S. Patent No. 3,473,821). Claims 3 and 4 were rejected under 35 U.S.C. § 103(a) as unpatentable over Barenyi et al. in view of Klaas (U.S. Patent No. 6,471,226). The Examiner rejected claims 2, 27, 37-43, 45, and 46 under 35 U.S.C. § 103(a) as unpatentable over Barenyi et al. in view of Yasunaga et al. (U.S. Patent No. 4,770,262). Claims 30-32 were rejected under 35 U.S.C. § 103(a) as unpatentable over Barenyi et al. in view of Yasunaga et al. and further in view of Suess (U.S. Patent No. 6,241,262). The Examiner rejected claims 47-52, 56, and 63 under 35 U.S.C. § 103(a) as unpatentable over Yasunaga et al. Claims 57-60 and 64 were rejected under 35 U.S.C. § 103(a) as unpatentable over Yasunaga et al. in view of Barenyi et al. The Applicants respectfully disagree with each of the Examiner’s rejections and, therefore, respectfully traverse same.

Claims 1 and 3-26 are patentable over Barenyi et al. because they recite a suspension system configured to be coupled to the frame of an ATV that combines a number of elements including, for example, a torsion control mechanism that has a transversal arm configured to be rigidly mounted to the frame of the ATV, where the transversal arm maintains the axis of rotation of the torsion control mechanism rigidly with respect to the frame. Barenyi et al. does not describe at least this feature.

Barenyi et al. describes an axle arrangement for automotive vehicles. In particular, Barenyi et al. describes a rear axle suspension which is connected to the body or frame of the vehicle via two bearing blocks 10, 11. (Barenyi et al. at col. 2, lines 21-28.) A supporting

element 12, which comprises an axle gearbox 13 and a front housing pipe 14, is mounted in the bearing blocks 10, 11 and is pivotable about a pivot axis B-B. (Barenyi et al. at col. 2, lines 28-32; see also Barenyi et al. at col. 2, lines 55-59.) Guide arms 17 are mounted on the ends of a crosspiece 15 by suitable journal pins 16 so that the guide arms pivot about a transverse axis A-A. (Barenyi et al. at col. 2, lines 33-38.) The guide arms 17 carry wheel supports 18 and wheels 19 at their ends. (Barenyi et al. at col. 2, lines 38-42.)

Nowhere does Barenyi et al. describe or suggest a suspension system configured to be coupled to the frame of an ATV that combines a number of elements including, for example, a torsion control mechanism that has a transversal arm configured to be rigidly mounted to the frame of the ATV, where the transversal arm maintains the axis of rotation of the torsion control mechanism rigidly with respect to the frame. To the contrary, as pointed out above, the Barenyi et al. describes a automotive axle arrangement where the crosspiece 15 rotates about the axis B-B. Since the axis A-A of the crosspiece is not maintained rigidly with respect to the frame, Barenyi et al. does not describe each and every feature recited by claims 1 and 3-26, the reference cannot anticipate these claims.

For the same reasons, these same claims also are patentable over the combination of Barenyi et al. and Klaas (U.S. Patent No. 6,471,226). Klaas does not cure the deficiency noted above with respect to Barenyi et al.. Specifically, Klaas merely describes a swing arm that includes two hollow arm parts 12 and 14 that are fitted one into the other. Since Klaas does not provide any disclosure that cures the deficiency noted with respect to Barenyi et al., Klaas cannot be combined properly with Barenyi et al. to render obvious any of claims 1 and 3-26. Accordingly, the claims are patentable thereover.

With respect to claims 27-34 and 36-46, the Applicants respectfully submit that the claims are patentably distinguishable over the combination of Barenyi et al. and Yasunaga et al. for the same reasons that claims 1 and 3-26 are patentable thereover. In particular, as

pointed out above, Barenyi et al. does not describe or suggest a suspension system configured to be coupled to the frame of an ATV that combines a number of elements including, for example, a torsion control mechanism that has a transversal arm configured to be rigidly mounted to the frame of the ATV, where the transversal arm maintains the axis of rotation of the torsion control mechanism rigidly with respect to the frame. While Yasunaga et al. does describe an ATV, it does not correct the deficiencies noted with respect to Barenyi et al.

Yasunaga et al. describes a four-wheel motor vehicle. The four-wheel vehicle has a swing arm 115 with a front end pivotally supported on brackets 114. (Yasunaga et al. at col. 4, lines 50-55.) The rear wheels 116 are supported at the rear end of the swing arm. (*Id.*) There is nothing in Yasunaga et al., however, that describes or suggests a torsion control mechanism that has a transversal arm configured to be rigidly mounted to the frame of the ATV, where the transversal arm maintains the axis of rotation of the torsion control mechanism rigidly with respect to the frame. Since Yasunaga et al. does not supply the elements missing from Barenyi et al., it cannot be combined with that reference to render obvious claim 27 or any of the claims that depend therefrom.

Similarly, claims 30-32 are patentable over the combination of Barenyi et al., Yasunaga et al., and Suess (U.S. Patent No. 6,241,262). As discussed above, neither Barenyi et al. nor Yasunaga et al. describe or suggest a suspension system configured to be coupled to the frame of an ATV that combines a number of elements including, for example, a torsion control mechanism that has a transversal arm configured to be rigidly mounted to the frame of the ATV, where the transversal arm maintains the axis of rotation of the torsion control mechanism rigidly with respect to the frame. Suess does not cure this deficiency. Suess describes an independent wheel suspension in a semi-trailing arm construction. (Suess at col. 2, lines 47-54.) There is nothing in the disclosure of Suess that suggest it may be combined

with Barenyi et al. and Yasunaga et al. to arrive at the claimed invention. As a result, the claims are patentable over the three references.

Claims 47-55 are patentably distinguishable over Yasunaga et al. because the reference does not provide any discussion of the ratio of the swing arm length to the wheel base length. The Applicants, moreover, can find nothing in the specification that states Yasunaga et al. even acknowledges the claimed range. As M.P.E.P. § 2125 explains:

PROPORTIONS OF FEATURES IN A DRAWING ARE NOT EVIDENCE OF ACTUAL PRO-PORTIONS WHEN DRAWINGS ARE NOT TO SCALE

When the reference does not disclose that the drawings are to scale and is silent as to dimensions, arguments based on measurement of the drawing features are of little value. See *Hockerson-Halberstadt, Inc. v. Avia Group Int'l*, 222 F.3d 951, 956, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000) (The disclosure gave no indication that the drawings were drawn to scale. “[I]t is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue.”). However, the description of the article pictured can be relied on, in combination with the drawings, for what they would reasonably teach one of ordinary skill in the art. *In re Wright*, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977) (“We disagree with the Solicitor’s conclusion, reached by a comparison of the relative dimensions of appellant’s and *Bauer*’s drawing figures, that *Bauer* ‘clearly points to the use of a chime length of roughly 1/2 to 1 inch for a whiskey barrel.’ This ignores the fact that *Bauer* does not disclose that his drawings are to scale. ... However, we agree with the Solicitor that *Bauer*’s teaching that whiskey losses are influenced by the distance the liquor needs to ‘traverse the pores of the wood’ (albeit in reference to the thickness of the barrelhead)” would have suggested the desirability of an increased chime length to one of ordinary skill in the art bent on further reducing whiskey losses.” 569 F.2d at 1127, 193 USPQ at 335-36.)

Therefore, the Examiner’s reliance on the drawings in Yasunaga et al. is improper. No where does the reference state that the drawings are to scale. Since the reference does not discuss anything about the range recited by claims 47-55, the reference cannot be relied upon to render those claims obvious.

Claims 56 and 58-62 are patentably distinguishable over Yasunaga et al. and the combination of Yasunaga et al. and Barenyi et al. because the claims recite an ATV combining a number of elements including, for example, a torsion control mechanism disposed above the lower most portion of the lower supporting portion of the frame. As recognized by the Examiner, Yasunagi et al. does not describe a torsion control mechanism. As a result, Yasunaga et al. cannot be relied upon by itself to reject the claims. Furthermore, while Barenyi et al. does disclose an axle arrangement with a torsion rod 23, Barenyi et al. does not disclose that the torsion control mechanism is above the lower most portion of the frame. To the contrary, Barenyi et al. discusses how the torsion bar 23 is disposed beneath the frame of the vehicle. (Barenyi et al. at col. 21-28.)

Claims 63 and 65-66 are patentably distinguishable over Yasunaga et al. and the combination of Yasunaga et al. and Barenyi et al. because the claims recite a suspension system combining a number of elements including, for example, a torsion control mechanism configured to be disposed above the lower most portion of a lower supporting portion of a frame. As recognized by the Examiner, Yasunagi et al. does not describe a torsion control mechanism. As a result, Yasunaga et al. cannot be relied upon by itself to reject the claims. Furthermore, while Barenyi et al. does disclose an axle arrangement with a torsion rod 23, Barenyi et al. does not disclose that the torsion control mechanism configured to be disposed above the lower most portion of the frame. To the contrary, Barenyi et al. discusses how the torsion bar 23 is disposed beneath the frame of the vehicle. (Barenyi et al. at col. 21-28.)

With respect to claims 28-34, 36-56, and 58-66, the Applicants respectfully noted that each of the claims contained the same typographical error. In particular, each of the recitation of the dependencies did not include a space between the word “claim” and the number. This has been corrected.

Finally, the Applicants appreciate the Examiner's indication that claims 6, 7, 28, 29, and 44 would be allowable if rewritten in independent form. For this reason, the Applicants have added new claims 67-71, which recite the features of former claims 6, 7, 28, 29, and 44. As a result, each of these claims are in a condition for allowance.

The Applicants respectfully submit that each of the rejections presented by the Examiner have been addressed and that this application has been placed in condition for allowance. Accordingly, the Applicants respectfully request reconsideration of the claims and an expedient allowance of this application.

If there are any fees due in connection with this submission that are not otherwise accounted for, please charge our Deposit Account No. 03-3975 and refer to Order No. 086162/0283087.

Respectfully submitted,

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